IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

MISC.CIVIL APPLICATION NO. 37 OF 2003

Office notes, office memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Shri Ambar Joshi for the Applicant.

CORAM : ABHAY S.OKA, J.

DATED : 16th August, 2004.

P.C.:

1. Heard the learned Counsel appearing for the Applicant.

2. On 21st July 2003 this Court issued notice to the Respondents. When the matter appeared before me on 25th June 2004, the office noting showed that the notice has been duly served on the Respondent personally. It appears that as the report of the Bailiff was misplaced in the office of this Court, Civil Application No.1 of 2004 was filed for issuance of fresh notice to the Respondent. The said application was granted on 25th June 2004. Liberty was also granted to the Applicant to serve private notice on the Respondent.

3. The report of the office is that the private notice has been duly served on the Respondent by

registered post A.D. The postal acknowledgement is placed on record along with the service affidavit of the Clerk of the Advocate for the Applicant.

4. When the notice issued by this Court earlier was served in the year 2003, none appeared for the Respondent. After service of the fresh notice by Registered Post A.D., no one has appeared for the Respondent. None appears for the Respondent when the matter is called out.

5. The Applicant is the wife and the Respondent is the husband. As disclosed in the application, the Applicant-wife has filed an application under section 125 of the Code of Criminal Procedure, 1973, against the Respondent and the same is pending in the Court of the Judicial Magistrate First Class, Pimpri, Pune. There is one more criminal case pending against the Respondent before the same Court.

6. The Respondent has filed a Marriage Petition in the Court of the 3rd Addl. Civil Judge, Senior Division, Margao, Dist. Goa, against the Applicant for divorce. The Applicant has stated in the application that she is residing at Chinchwad, Pune, along with her parents. Her father is suffering from paralysis and mother is very old. According to the Applicant, her brother is the only

bread earner in the family and he has to go out for earning his livelihood. It is therefore submitted that it is very difficult for the Applicant to attend the Court in Goa.

7. The Application for maintenance filed by the Applicant is pending before the Court of the Judicial Magistrate First Class, Pimpri. There is one more criminal case pending in the same Court against the Respondent. Therefore, the Respondent is required to attend the Court at Pimpri in Pune district. Therefore, very little prejudice will be caused to the Respondent if the Marriage Petition filed by him is transferred from the Court at Goa to the Family Court at Pune. Liberty can be granted to the Respondent for transfer of the Application under section 125 of the Code of Civil Procedure to the Family Court at Pune, so that both the matters can be heard together.

8. Hence the following order is passed:

(i) The Application is allowed in terms of prayer clause (a).

(ii) Liberty to the Respondent to apply for transfer of Application No.145 of 2002 pending in the Court of the Judicial Magistrate First Class, Pimpri, to the

Family Court at Pune.

(iii) There will be no order as to costs.

(iv) Certified copy expedited.

Judge.